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Letter dated 24 September 2004 from the Permanent Representative of Morocco to the United Nations addressed to the Secretary-General

The Kingdom of Morocco has observed that the other parties to the regional dispute over Sahara have undertaken a surprising diplomatic campaign, accompanied by specific observations of a new kind, intended, to all appearances, to delay a definitive, consensual political solution.

This being the case, the Kingdom of Morocco, which has fully supported your efforts to arrive at a mutually acceptable political solution, felt obliged to draw up a memorandum of clarification, which I have the honour to transmit to you (see annex).

I should be grateful if you could arrange for the text of this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Mohamed **Bennouna**
Ambassador
Permanent Representative

04-52506 (E) 300904 300904

Annex to the letter dated 24 September 2004 from the Permanent Representative of Morocco to the United Nations addressed to the Secretary-General

Memorandum dated 24 September 2004 of the Kingdom of Morocco concerning the regional dispute over Sahara

The Security Council in its resolution 1541 (2004) of 29 April 2004 reaffirmed its strong support for the efforts of the Secretary-General and his Personal Envoy to achieve a political solution acceptable to all parties to the dispute over Sahara and called upon all the parties and the States of the region to cooperate to ensure the success of those efforts.

This objective was clearly reaffirmed in the letter dated 11 June 2004 from the Secretary-General addressed to the President of the Security Council, in which he announced that he had asked his Special Representative, Mr. Alvaro de Soto, to **"continue to work with the parties and neighbouring countries, in pursuit of a just, lasting and mutually acceptable political solution"** (S/2004/492).

Since that time, it has unfortunately become clear that some parties to this dispute have undertaken a surprising diplomatic campaign, accompanied by specific observations of a new kind, intended, to all appearances, to delay a definitive, consensual political solution.

Without wishing to enter into a debate, the Kingdom of Morocco would like to clarify its position in the light of these recent developments.

Morocco will limit itself to recalling the historical background, the known facts and the positions put on record. It would also like to reiterate its commitment to a peaceful, definitive solution, consistent with international law, to this issue, which remains for the people of Morocco, and they are unanimous on this point, a question of full realization of its territorial integrity.

The observations of the Kingdom of Morocco will deal, in particular, with the following four aspects:

- Clarification of the status of Morocco with respect to Sahara;
- The history of the question at the United Nations;
- Algeria's part in the conflict;
- Morocco's commitment to finding a definitive political solution to the dispute.

A. Clarification of the status of Morocco with respect to Sahara

1. **Morocco's status with respect to Sahara is not that of a foreign State or an "occupying Power"**, as the President of Algeria put it in his letter addressed to the Secretary-General and circulated on 18 August 2004 as a document of the General Assembly and of the Security Council (A/58/873-S/2004/657).

In describing Morocco as an "occupying Power", Algeria is ignoring the reality of the Sahara issue and the meaning of the term "occupying Power" as established in conventional and customary international law.

2. The existence of this dispute was confirmed by the International Court of Justice in its order of 22 May 1975 settling a preliminary question in connection with its advisory opinion on Western Sahara. Moreover, the Security Council, following the announcement of the "Green March" by His Majesty the late King Hassan II on 16 October 1975, referred in its resolutions 377 (1975) of 22 October 1975 and 380 (1975) of 6 November 1975 to "negotiations that the parties concerned and interested might undertake under Article 33 of the Charter", with a view to settling the question definitively, as had been the case earlier with the other territories in southern Morocco occupied by Spain.

3. As it happens, when Morocco recovered its independence in 1956 it did not immediately regain all of its national territory. Having been subject to three-fold colonization, by France in the central part of the country, by Spain in the north and south and by an international administration in the city of Tangiers, the Kingdom of Morocco had to negotiate in stages the return of these different portions of **its national territory, in full conformity, moreover, with the purposes and principles of the Charter of the United Nations.**

Being anxious to settle by peaceful means its colonial dispute with Spain, Morocco preferred to take the route of negotiation, which enabled it to restore to the Kingdom the regions of **Tarfaya** and **Sidi Ifni** in 1958 and 1969, respectively.

4. However, it was obliged to wait until 1975 for Spain to withdraw from the Sahara territory. It was not until 11 November 1975 that negotiations were opened in Madrid among Spain, as the administering Power, Morocco and Mauritania, concluding on 14 November with the signing of the Madrid agreement, of which the General Assembly took note in its resolution 3458/B of 11 December 1975.

5. After Spain on 26 February 1976 and Mauritania on 19 August 1979 renounced all responsibility, Morocco had full administration of Sahara as an integral part of its territory.

6. In view of the persisting regional dispute over Sahara, the Secretary-General sought to find a mutually acceptable political solution. In his report of 24 April 2001, he says that he believes "that substantial progress has been made towards determining whether the Government of Morocco as the **administrative power** in Western Sahara is prepared to offer or support some devolution of authority for all the inhabitants and former inhabitants of the Territory that is genuine, substantial and in keeping with international norms" (S/2001/398, para. 19).

The implication is that Morocco, exercising authority over the territory quite legally, is therefore entitled to delegate certain powers to bodies democratically elected by the entire population concerned, specifically for the sake of settling definitively the regional dispute over Sahara.

7. In view of these irrefutable facts, it is completely erroneous and misplaced for Algeria to describe Morocco as the "occupying Power". Moreover, the use of the term in this situation is **contrary to conventional and customary international law.**

8. The concept of "occupying Power", as defined in the Hague Regulations of 1907 and the Fourth Geneva Convention of 12 August 1949 and in customary law, relates to a State that occupies all or part of the territory of another State and has certain powers related to the provisioning and security of its troops.

This concept has no relevance to the situation in Sahara, where there is not a war with another State or occupation of the territory of such a State.

9. Since Sahara has been an integral part of the Kingdom of Morocco since time immemorial, the colonial hiatus cannot have the effect of breaking the ancestral allegiance of the populations of this territory to the Moroccan sovereigns.

10. While pursuing the lawful objective of fully realizing its territorial integrity, the Kingdom of Morocco has been anxious to preserve its relations of friendship and brotherhood with its neighbours and partners, Algeria and Mauritania.

In that spirit, the Kingdom of Morocco, strong in its rights and in the unanimity of the Moroccan people, has taken part responsibly in good faith in African initiatives and United Nations efforts to find a definitive and viable solution to the dispute over Sahara.

B. The history of the question of Sahara at the United Nations: from the inability to implement the Settlement Plan to the search for a mutually acceptable political solution

11. Morocco participated in good faith in the implementation of the Settlement Plan proposed in 1991 by the United Nations to resolve the dispute over Sahara. However, implementation of the plan was thwarted by the obstacles constantly thrown up by the Frente POLISARIO to distort the identification process. The Secretary-General, in his report of 17 February 2000, observes that "**nine years have elapsed**" and "**it has not been possible ... to implement in full any of the main provisions of the United Nations settlement plan, with the exception of the monitoring of the ceasefire**", because of "**fundamental differences between the parties over the interpretation of its main provisions**" (S/2000/131, para. 32).

12. The Security Council drew the necessary conclusion from this finding in its resolution 1292 (2000) of 29 February 2000 by recommending to the Secretary-General to "consult the parties and, taking into account existing and potential obstacles, to explore ways and means to achieve an early, durable and agreed resolution of their dispute", which would define their respective rights and obligations in Western Sahara.

13. In fulfilment of that recommendation, Mr. James Baker, as Personal Envoy of the Secretary-General, held a series of consultations in 2000, first in London and then in Berlin, in which he invited the parties "to depart from the 'winner-take-all-mentality'" and to "discuss any possible political solutions in which each could get some, but not all, of what it wanted and would allow the other side to do the same" (S/2002/178 of 19 February 2002). In proposing a draft framework agreement in June 2001, the Secretary-General and his Personal Envoy stressed that the draft "**offers what may be the last window of opportunity for years to come**", and urged that the "**opportunity ought to be seized by all parties concerned as it is in the interest of the people of Western Sahara as well as those of the countries in the region**" (S/2001/613, para. 60).

14. The Security Council, in resolution 1359 (2001) of 29 June 2001, supported that recommendation and therefore encouraged "the parties to discuss the draft Framework Agreement and to negotiate any specific changes that would like to see in this proposal, as well as to discuss any other proposal for a political solution, which may be put forward by the parties, to arrive at a mutually acceptable

agreement". In response to that resolution, Morocco agreed to negotiate on the basis of the draft framework agreement, with the necessary flexibility, in order to settle definitively this regional dispute. Unfortunately, Algeria and the Frente POLISARIO chose to ignore resolution 1359 (2001) and refused to take part in the negotiations proposed to them by the Secretary-General. **Worse yet, Algeria proposed a plan for the division of Sahara to Mr. Baker on 2 November 2001 in Houston**. That proposal was naturally rejected by Morocco for both legal and political reasons (see letter dated 25 February 2002 from Morocco, document S/2002/192).

15. Since the Security Council found it impossible to choose between the various options presented to it at that time, Mr. Baker, in January 2003, without prior consultations, presented to the parties his proposed Peace Plan for Self-Determination of the People of Western Sahara, in which he tried to combine **two irreconcilable approaches**, that is, the Settlement Plan and the draft framework agreement. In the plan, Mr. Baker reintroduced the idea of holding a referendum, as provided for in the Settlement Plan, which would be associated with a transitional period fraught with dangers for the tranquillity of the local populations and the security and stability of the countries of the region (see the observations of Morocco annexed to the Secretary-General's report S/2003/565).

C. Algeria's part in the conflict

16. Algeria has been making systematic efforts since 1973 to thwart the full realization of Morocco's territorial integrity. Algeria's involvement in the question of Sahara has taken many and various forms: military engagement, financial and logistical support, diplomatic mobilization and training, breaches of international humanitarian law and the like. In addition to harbouring on its soil and supporting the Frente POLISARIO, Algeria sponsored the creation of a bogus "republic" in 1976 and rallied vigorously to get some countries to recognize this fictitious "entity" lacking in any feature of a sovereign State.

True, several countries opted subsequently to withdraw their recognition so as not to upset the process of a peaceful settlement of the dispute in the framework of the United Nations.

17. Furthermore, the official communications from Algeria addressed to the United Nations show clearly that the country presents itself as either a "concerned party" or an "important actor" or a "stakeholder" in the settlement of the dispute.

The Secretary-General of the United Nations and his Personal Envoy therefore rightly addressed Algeria directly to urge it "to engage as a party in these discussions [on the framework agreement] and to negotiate, under the auspices of my Personal Envoy, any specific changes it would like to see in the proposed document that would make it acceptable to it" (S/2001/613, para. 54).

18. Algeria's response to that proposal revealed plainly that that country is far more than a mere observer of the settlement process. The representative of Algeria in fact reproached the Secretary-General for having decided with "unacceptable casualness ... to reject ..., in a disrespectful manner, the objections by Algeria" to the framework agreement and for having ignored the point of view of "**an important actor**" (A/55/997).

19. In his report of 19 February 2002, the Secretary-General informed the Security Council about the visit that the Algerian President had made to Houston on 2 November 2001, during which he told Mr. James Baker, as Personal Envoy of the Secretary-General, that **"Algeria and the Frente POLISARIO would be prepared to discuss or negotiate a division of the Territory as a political solution to the dispute over Western Sahara"** (S/2002/178, para. 2).

By itself, that initiative demonstrates Algeria's obvious direct involvement in the dispute and clearly illustrates its backing of the Frente POLISARIO, even though Algeria has said in that regard in the most solemn manner that it cannot and does not wish, in any way, to stand in for it or to be its sponsor or spokesperson.

20. Later, in March 2003, Algeria commented on Mr. Baker's proposed peace plan, describing itself as a neighbouring country and interested party (S/2003/565, p. 46).

21. **At the military level**, Algeria has not hesitated to deploy illegally units from its regular army in Sahara. In fact, in both January and February 1976, the Royal Moroccan Armed Forces found themselves, in the town of Amgala, up against Algerian regular army units, who were there, according to the official Algerian press agency, to provide food and medicine to the Saharan people. Those units were in fact armed with artillery and surface-to-air missiles (SAM), including SAM-6 and SAM-7 missiles.

While several dozen Algerian officers, non-commissioned officers and soldiers were captured during that confrontation, they were all released and returned to their authorities.

22. Those events included the capture of several hundred members of the Royal Moroccan Armed Forces. The vast majority of them were interrogated by Algerian officers and detained in Algerian prisons before being transferred, many years later, to Frente POLISARIO camps in Tindouf.

23. **At the humanitarian level**, it should be recalled that until 1996 Algeria denied the Office of the United Nations High Commissioner for Refugees access to the refugee camps located in its territory, thus preventing it from fully discharging its mandate.

Algeria also continues to exercise, directly, strict control over the camps, particularly by monitoring and limiting the movement of persons. It is therefore responsible for failing to comply with the Convention relating to the Status of Refugees of 1951, which states in article 26: "Each Contracting State [as is the case with Algeria] shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory ...".

It is also responsible for the continued detention in its territory, after the entry into force of the ceasefire in 1991, of 412 members of the Royal Moroccan Armed forces, in flagrant violation of international humanitarian law and in defiance of repeated calls from the international community.

24. Thus, through its full political and diplomatic involvement in this dispute, its systematic and active participation in all talks organized by Mr. Baker or in direct negotiations with Morocco on draft resolutions on the question of Sahara within the Security Council, the General Assembly and other international bodies, not to

mention its many actions, responses and proposals at the United Nations, **Algeria cannot in all objectivity pretend to act in this dispute, "merely as a Member of the United Nations concerned about respect for ... the principles of the Charter" (as the Algerian President said in his aforementioned letter)** (A/58/873-S/2004/657).

25. Throughout the interview he granted to the United States Public Broadcasting System television network on 19 August 2004, Mr. James Baker clearly identified Morocco and Algeria as **the two parties** to the dispute and its **main protagonists**.

D. Morocco's commitment to a definitive political solution to the dispute

26. Morocco believes that the search for a mutually acceptable political solution remains the best path to a definitive and viable settlement of this regional dispute.

27. **The courageous and responsible proposal of autonomy with respect for national sovereignty is entirely in keeping with the recognition of self-determination as the preferred means for a given population to exercise its individual and collective rights.**

28. In conclusion, the Kingdom would like to recall that:

- For the Moroccan people the question of the Sahara is a matter of the full realization of territorial integrity and the safeguarding of national unity;
- The United Nations clearly established that it was not feasible to implement the Settlement Plan and recommended the search for a compromise that would move away from the two options envisioned in that plan;
- The granting of an autonomous status negotiated and approved by the populations concerned is a political solution consistent with international law and offers the greatest prospects for a definitive settlement;
- Morocco remains open to such a solution, which would preserve its sovereignty and territorial integrity and allow the populations to manage their own local affairs directly and democratically;
- Morocco stands ready to cooperate with the other parties as well as the Secretary-General and his Special Representative to reach a solution acceptable to all. To that end, it is ready to engage, in good faith and with determination, in serious and constructive negotiations with the intent of contributing in a specific and credible manner to their success;
- Morocco looks towards the future and sincerely hopes to find in the other parties the same political will to reach a definitive solution to this regional dispute.

As it pursues that goal, the Kingdom of Morocco hopes that it may count on the good will of those devoted to creating the most favourable conditions for a realistic and consensual solution to the dispute over Sahara, a solution that would allow the populations in the camps to rejoin their families at last and for the States of the Maghreb to come together in unity and solidarity.